

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Teck Cominco American Incorporated (Teck Cominco) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Teck Cominco to conduct a focused remedial investigation/feasibility study (RI/FS) of Tailings Disposal Facility Nos. 1 and 2 (TDF-1 and TDF-2). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Teck Cominco agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Teck Cominco's responsibility under this Order. Teck Cominco shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site, for the sole purpose of this Agreed Order, is referred to as the Pend Oreille Mine, located approximately 2 miles north of Metaline Falls, Washington in Sections 10 and 15, Township 39 North, Range 43 East, Willamette Meridian (WM). The Pend Oreille Mine Tailings Disposal Facility Nos. 1 and 2 (TDF-1 and TDF-2) are located within the Site. The Site

is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology and Teck Cominco.
3. PLP: Refers to Teck Cominco
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Teck Cominco:

- 1) The Pend Oreille Mine was in operation from 1952 until its closure in 1977. At the time of closure, the Bunker Hill Company owned the mine. Between the years 1977 to 1986, the Bunker Hill Company, Pintlar, and GRC Exploration continued to operate pumps to prevent mine flooding as well as perform exploration around the mine. From 1986 to 1988, the mine was allowed to flood. In 1988, Resource Finance Corporation entered into an option-purchase agreement with Pintlar and began to dewater the mine. The Resource Finance Corporation purchased the mine and mill along with 13,000 acres of contiguous mineral holdings in 1990. Cominco American Incorporated became the owner of the mine in 1995.
- 2) Cominco American Incorporated changed its name to Teck Cominco American Incorporated in July 2001.
- 3) Tailings are the fine material that remains following ore processing and metal extraction. The tailings from the Pend Oreille Mine were directly discharged to the Pend Oreille River prior to 1967. After 1967, three tailings disposal facilities were used for tailings disposal

from the Pend Oreille Mine. Tailings from the process mill were transported via a starter dam to the tailing disposal facility. Tailings Disposal Facility No. 1 (TDF-1) covers approximately 24 acres and was used from 1967 to 1974. Tailings Disposal Facility No. 2 (TDF-2) was used from 1974 to 1975 and covers approximately 25 acres. Tailings Disposal Facility No. 3 (TDF-3) was used from 1975 until mine closure in 1977. TDF-3 encompasses about 20 acres.

- 4) To prepare for the resumption of operations at the mine, Teck Cominco constructed a new tailings disposal facility over TDF-3. In constructing the new disposal facility, TDF-3 was covered with a geomembrane liner system that includes two, sixty mil high density polyethylene liners. The new facility's liner system essentially functions as a cover system for TDF-3. In addition, monitoring wells were installed downgradient of TDF-3 and have been supplemented since construction of the new tailings disposal facility.
- 5) Although the tailings in TDF-1 and TDF-2 have not been characterized, the tailings in TDF-1 and TDF-2 are from the same ore horizon as most of the tailings in TDF-3 and were processed by the same mill. Analysis of the existing tailings in TDF-3 show high levels of lead, zinc, arsenic, and cadmium and exceed the Washington State dangerous waste levels for lead toxicity by failure of the toxicity characteristic leaching procedure (TCLP) (ENSR 1999a).
- 6) Credible evidence that releases of hazardous substances to the environment associated with the TDF-1 and TDF-2 have occurred at the site is contained in the following documents:
 - Dames & Moore, 1997. Seep Water Analysis from Tailings Pond No.1. Letter Report to Cominco American, Spokane, Washington. Spokane, Washington.
 - Dames & Moore, 1999. Focused Groundwater Assessment Tailings Storage Facility No. 3. Pend Oreille Mine Metaline Falls, Washington. Spokane, Washington.

- . ENSR, 1999a. Analysis of Data of the Pend Oreille Tailings Impoundment #3 February 1999 Sampling Study. Letter to Mr. Keith Stoffel, Washington Department of Ecology. Fort Collins, Colorado.
- . ENSR, 1999e. Geochemical Evaluation of Pend Oreille Mine Monitoring Wells. Report prepared for Cominco American Inc., Spokane, Washington. Redmond, Washington.
- . ENSR, 2000. Final Environmental Impact Statement Pend Oreille Mine Project. Report prepared for Washington Department of Ecology, Spokane, Washington. Redmond, Washington.
- . Maxim Technologies, Inc 1998. MTCA/Dangerous Waste Characterization Preliminary Results No. 3 Tailings Impoundment. Letter to Dave Godlewski, Environmental Manager, Cominco American, Inc. Spokane, Washington. Spokane, Washington.

As a result of this evidence, Ecology has identified Teck Cominco American Incorporated as a Potentially Liable Person (PLP) for releases of hazardous substances at TDF-1 and TDF-2 at the Pend Oreille Mine.

VI. ECOLOGY DETERMINATIONS

1. Teck Cominco is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because of their ownership of the Pend Oreille Mine and associated tailings disposal facilities.

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued a potentially liable person status letter to Teck Cominco dated December 10, 2004, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated January 4, 2005, Teck Cominco voluntarily waived its rights to notice and comment and accepted Ecology's determination that Teck Cominco is a potentially liable person (PLP) under RCW 70.105D.040.

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLP to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Teck Cominco take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. The work to be performed includes the planning, implementation, and reporting on the conduct of a Focused Remedial Investigation and Feasibility Study (RI/FS) for TDF-1 and TDF-2. Attached hereto as Exhibit B is a Scope of Work for the completion of a Focused RI/FS. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.
2. The PLP shall submit all necessary work plans to implement the Scope of Work (Exhibit B) to Ecology for review and approval according to the Schedule of Deliverables attached as Exhibit B. Upon approval by Ecology, the PLP will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.
3. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:
 - a. TASK I. Project Plan including RI Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Public Participation Plan.
 - b. TASK II. Conduct RI Field Investigations.
 - c. TASK III. Focused Remedial Investigation/Feasibility Study Report.

These work plans and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

4. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.

B. Remedial Action Costs

Teck Cominco shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. Teck Cominco shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, Teck Cominco shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

William J. Fees
4601 North Monroe
Spokane, Washington 99205

The project coordinator for Teck Cominco is:

David W. Godlewski
15918 East Euclid Avenue
Spokane, Washington 99216

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Teck Cominco, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and Teck Cominco may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. Teck Cominco shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Teck Cominco either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Teck Cominco's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Teck Cominco. Teck Cominco shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Teck Cominco where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Teck Cominco unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, Teck Cominco shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology and shall submit these results in accordance with Section VII of this Order.

All sampling data shall be submitted to Ecology according to the requirements of WAC 173-340-840(5) and is presented in the Ecology Environmental Information Data Submittal

Guide. Groundwater sampling data shall also be submitted in an electronic format agreed to by the Ecology Site Manager. These submittals shall be provided to Ecology in accordance with Section VII of this Order.

If requested by Ecology, Teck Cominco shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Teck Cominco pursuant to implementation of this Order. Teck Cominco shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Teck Cominco or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. of this Order, Ecology shall notify Teck Cominco prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with Teck Cominco.

Ecology shall maintain the responsibility for public participation at the Site. However, Teck Cominco shall cooperate with Ecology, and shall:

1. Ecology will develop appropriate mailing list(s) with input from Teck Cominco, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, interim actions, cleanup action plans, and engineering design reports. Ecology will edit, finalize and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and

meetings. Teck Cominco will be provided an opportunity to review fact sheets prior to distribution.

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify Teck Cominco prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Teck Cominco that do not receive prior Ecology approval, Teck Cominco shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Metaline Falls Public Library
302 Park Avenue (In Cutter Theater Building)
Metaline Falls, Washington 99153
- (b) Ecology's Eastern Regional Office
4601 North Monroe
Spokane, Washington 99205

At a minimum, copies of public notices, including fact sheets and documents associated with the public comment period shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, Teck Cominco shall preserve all records, reports,

documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Teck Cominco shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision, Teck Cominco has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(c) Teck Cominco may then request Ecology management review of the decision. This request shall be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of Teck Cominco's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Teck Cominco to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of Teck Cominco including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Teck Cominco; or
- (b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (c) Endangerment as described in Section VIII.M. of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Teck Cominco.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Teck Cominco written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by

Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L. when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- (a) Delays in the issuance of a necessary permit which was applied for in a timely manner;
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M. of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N. of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Teck Cominco. Teck Cominco shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Teck Cominco to cease such activities for such period of time as it

deems necessary to abate the danger. Teck Cominco shall immediately comply with such direction.

If, for any reason, Teck Cominco determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Teck Cominco may cease such activities. Teck Cominco shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Teck Cominco shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Teck Cominco's cessation of activities, it may direct Teck Cominco to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Teck Cominco's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights/No Settlement

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Teck Cominco to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Teck Cominco regarding remedial actions required by this Order, provided Teck Cominco complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such

remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Teck Cominco without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Teck Cominco's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Teck Cominco shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Teck Cominco shall notify Ecology of said transfer. Upon transfer of any interest, Teck Cominco shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Teck Cominco pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.

2. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order and that are known to be applicable at the time this Order becomes effective are binding and enforceable requirements of this Order.

Teck Cominco has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Teck Cominco determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the

remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Teck Cominco shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Teck Cominco shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Teck Cominco and on how Teck Cominco must meet those requirements. Ecology shall inform Teck Cominco in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Teck Cominco shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Teck Cominco shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

Teck Cominco agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Teck Cominco, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Teck Cominco shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the

negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Teck Cominco's receipt of written notification from Ecology that Teck Cominco has completed the remedial activity required by this Order, as amended by any modifications, and that the Teck Cominco has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
 2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
 3. In the event Teck Cominco refuses, without sufficient cause, to comply with any term of this Order, Teck Cominco will be liable for:
 - (a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 - (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
 4. This Order is not appealable to the Washington Pollution Control Hearings Board.
- This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

TECK COMINCO AMERICAN INCORPORATED

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



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